YAP KEE PAR

v.

MOLLY YAP & 3 ORS.

HIGH COURT MALAYA, PENANG
TUAN VINCENT NG KIM KHOAY J
[PETITION NO. 31-32-94]
11 NOVEMBER 1995

PROBATE & ADMINISTRATION: *Letters of administration - Application thereof - Whether wife has priority over children - Whether person otherwise entitled may be passed over - Probate & Administration Act 1959 (Act 97), s. 30 - Court's discretion.*

The petitioner had applied for letters of administration and cited parties who resisted his application, on the ground that only RM833.79 was left in the deceased's estate. The petitioner, alleging that the reason given was untrue, requested from the beneficiaries statements of the deceased's accounts and attempted to ascertain from the beneficiaries the immovable property belonging to the estate. The beneficiaries however neglected or refused to provide such information.

At the hearing of the application, the parties cited agreed to the granting of the letter of administration, provided it was granted jointly to the petitioner and the wife of the deceased, Madam Leong. They contended that Madam Leong had first priority to petition for the letter of administration. The petitioner objected.

Held:

[1] A female spouse has equal rights with but no priority over her child or children by the deceased to petition the letters of administration.

[2] No rule can be laid down as to what are special circumstances enabling the Court to pass over a person otherwise entitled to a grant, each case must be decided upon its own merits, though special circumstances ought to be confined to only looking at the circumstances directly affecting the administration of the estate.

[3] Madam Leong was a joint property owner with the deceased and had joint bank accounts with the deceased. Her interest as an administratrix will conflict with her personal interest in the money or the property held by her.

[Application allowed].

Cases referred to:
Ingall v. Moran [1944] 1 All ER 97 ***(refd)***
Chia Teck Liang v. Tan Soo Khiang [1936] MLJ 148 ***(refd)***
Govindasamy Pillay & Sons Ltd v. Gok Seng Chai & Ors. [1961] 27 MLJ 89 ***(refd)***
Re Grundy [1868] LR 1 P & D 459 ***(refd)***
Re S [1967] 2 All ER 50 ***(refd)***
Re Knight [1939] 3 All ER 928 ***(refd)***
Re Biggs [1966] 1 All ER 358 ***(refd)***
Re Newsham [1966] 3 All ER 681 ***(refd)***

Legislation referred to:
Probate and Administration Act 1959 (Act 97), s. 30

Other source referred to:

Executors, Administrators And Probate and Mallal's Supreme Court Practice, Williams, Mortimer & Sunnucks, O. 80 Administration And Similar Actions

Probate and Administration in Singapore and Malaysia, Law and Practice, G. Raman, pp. 51, 84

For the petitioner - K.L. Ong; M/s. Ghazi & Lim
For the beneficiaries - Parameswary; M/s. Tay, Tee & Nasir

JUDGMENT

Vincent Ng Kim Khoay J:

The deceased Yap Kuan Keat died on 4 March 1993 leaving behind his second wife Leong Lian Ho and four children namely Yap Kee Par, Molly Yap, Nancy Yap and Alan Yap Kie Leng. Madam Leong Lian Ho (Madam Leong) was the step-mother of the four children.

The petitioner who is one of the deceased's sons has applied for letters of administration of the estate of the deceased to be granted to him. He has cited the other beneficiaries (parties cited) who have resisted his application.

The parties cited have not given any valid reasons as to why the petitioner should not be granted letters of administration except to say that there is only a sum of RM833.79 remaining in the deceased's estate. The petitioner has at all times alleged that this is untrue as the deceased had substantial cash and immovable assets both in Malaysia and overseas prior to his death. He had deposed in para. 11 of his supporting affidavit that: "I verily believe that there is a conspiracy among Molly, Alan, Nancy and Madam Leong to prevent a suitable person from properly administering the Estate and to query the sudden loss of substantial funds. It is also almost impossible to believe that my father who had 1.6 million pounds sterling to his name in 1990 is reduced to assets worth only RM833.79, at the time of his death." The petitioner's solicitor had repeatedly written letters to the parties cited to enquire as to whether they were willing to renounce their right to the LA but to no avail. The petitioner's solicitor had also made various attempts to ascertain from these beneficiaries the immovable properties belonging to the estate. The parties cited have neglected or refused to provide any information save to say that at the time of his demise, the deceased left only RM833.79 in an account held jointly with Madam Leong at the Development Bank of Singapore. (See Exhibit "AYKL1" of affidavit of Dr. Alan Yap Kie Leng affirmed on 5 December 1994 (Encl. 19)).

In his affidavits referred to me, the petitioner gave his reasons why he thought it was impossible for the deceased to have only that amount in the bank. And, that the parties cited had failed, despite repeated requests, to furnish statements of the deceased's other alleged accounts, or to account for the contents of the safe deposit box, save only that Molly Yap had revealed that the deceased's coin collection was amongst the valuables removed from the safe deposit box. They have also failed to render details of the deceased's several immovable properties in Malaysia and England and what happened to them.

Before me, at the hearing, it was eventually agreed by the parties cited that letters of administration (LA) may be granted, but they then contended that it should be granted jointly to the petitioner and the wife of the deceased Madam Leong.

The petitioner objects to Madam Leong being made a joint administrator of the estate, as she was not the lawful wife of the deceased and appeared to have dealt with his father's assets in cohort with Alan Yap. Thus, on only putting her in the position of conflict but she may have caused loss to the estate. The petitioner therefore prayed that the Court grant him the *locus standi* to make enquiries and to gain access to the deceased's assets, as the reluctance of the parties cited to take out letters of administration and their objections to his application for LA was solely, according to him, to prevent him from obtaining LA to trace the true worth of the estate.

The parties cited strenuously denied any allegation that they have misapplied the deceased's funds but said that any monies given to them by the deceased were outright gifts. Madam Leong further averred that she is entitled to the assets because the properties or assets were held jointly in her name together with the deceased.

After careful study of the various affidavits and hearing the oral submissions of Counsel, I find that:

There is not one single valid reason given by the parties cited as to why the petitioner should not be granted the LA. The reason by them that there is only a balance of RM833.79 remaining in the deceased's estate appears improbable. If it is true as alleged that this is the amount remaining, they should have no objections to the application for LA by the petitioner, as they would have nothing to lose and would not be prejudiced.

The petitioner should be allowed a chance to trace the assets of the deceased if any exists. He has no *locus standi* to represent the estate without an LA. (See *Ingall v. Moran* [1944] 1 All ER 97, *Chia Teck Liang v. Tan Soo Khiang* [1936] MLJ 148 *Govindasamy Pillay & Sons Ltd v. Gok Seng Chai & Ors.* [1961] 27 MLJ 89, Williams, Mortimer and Sunnucks On Executors, Administrators And Probate and Mallal's Supreme Court Practice - under O. 80 Administration And Similar Actions.)

The parties cited had also contended that Madam Leong was the deceased's lawful widow and she has the first priority to petition for the LA. This contention is wholly misconceived, as in my view, unlike a male spouse, a female spouse has equal rights with, but no priority over her child or children by the deceased, to petition for letters of administration.

Under the laws on intestate succession, persons who are entitled to the estate of a deceased in order of priority based on the closeness of relationship to the deceased are as follows:

(1) spouse;

(2) issues;

(3) parents;

(4) brothers or sisters;

(5) issues of brothers or sisters;

(6) grandparents;

(7) uncles or aunts. (See Distribution Act 1958 (Act 300) (Malaysia)).

Priority to petition for letters of administration is determined, therefore, by the priority of entitlement to the estate.

Each member of the seven classes above has the same rights *vis-a-vis* another member of the same class.

On priority of entitlement to the estate, a female spouse is entitled to one-third (1/3) and her child (or children, to be shared equally among them) is entitled to two-third (2/3) of the estate of the male spouse, whereas a male spouse is entitled (at least, under current law) to the whole of the estate of his deceased wife. It would thus follow that whereas a male spouse of a deceased female spouse is clothed with priority to petition for letters of administration, the surviving female spouse enjoys no such priority over her child or children.

Nevertheless, be that as it may, s. 30 of Probate and Administration Act 1959 (Act 97) gives the Court a wide discretion as to persons to whom administration is to be granted, enabling the Court to pass over a person otherwise entitled to a grant; and any such administration may be limited in any way the Court thinks fit. In granting general or limited administration of estates, the Court must have regard to the rights of all persons interested in the estate of the deceased person or to the proceeds of its sale and in particular, administration with the will annexed may be granted to a devisee or legatee. Where the deceased dies wholly intestate as to his estate, administration must be granted to some one or more persons beneficially interested in the residuary estate if application is made for that purpose; unless the estate is insolvent or for any other special circumstances it appears necessary or expedient to appoint as administrator some person other than the person who would by law have been entitled to the grant.

One object which the Court keeps in view is the expeditious and economical administration of estates of deceased persons. (See *Re Grundy* [1868] LR 1 P & D 459). No broad rule of law can be laid down as to what are special circumstances enabling the Court to pass over a person otherwise entitled to a grant; each case must be decided upon its own merits, though special circumstances ought to be confined to only looking at circumstances directly affecting the administration of the estate. See *Re S* [1967] 2 All ER 50, *Re Knight* [1939] 3 All ER 928. Indeed in *Re Biggs* [1966] 1 All ER 358, a grant of letters of administration to the deceased's niece, passing over an executor who had intermeddled but refused to prove the will. And, in *Re Newsham* [1966] 3 All ER 681, a grant was made, passing over a widow, so as not to prejudice an insurance claim. (see also *Probate and Administration in Singapore and Malaysia: Law and Practice* by G. Raman p. 51).

Madam Leong Lian Ho should not be appointed a co-administrator as she is illiterate (not denied) and would be a hindrance to the petitioner's quest to trace the property of and the transactions done by the deceased in his lifetime. It has been alleged that she may have intermeddled in the estate, which may put her in a position of conflict. The petitioner had deposed in para. 6 of his affidavit (Encl. 22) that the deceased had approximately 1.6 million pounds sterling in 1990 in joint accounts with Madam Leong, and this amount was in the account of the deceased when he was senile and bedridden, but Madam Leong had wilfully refused to answer the petitioner's queries or to provide any information as regards the funds in the accounts. It is to be noted that Madam, Leong's affidavit in reply (Encl. 25), had acknowledged this fact, but merely stated that there was no substantial sums in her husband's name when he died.

Madam Leong was a joint property owner with the deceased and had joint bank accounts with the deceased. Her interest as an administratrix will conflict with her personal interest in the money or the property held by her. There is no denial from Madam Leong that she has failed to give an account of her management of funds and assets of the deceased's estate. A letter from Standard Chartered Bank dated 30 March 90 (Exh. "YKP1" of Encl. 13 affirmed by petitioner) states that Hongkong Dollars 6,797,382.71 was credited solely into her account on 17 January 1990. Furthermore, it would appear that she and Alan Yap (one of the parties cited) are united in refusing to agree to the petitioner's application for LA. It is also pertinent to note that the said letter of 30 March 1990 from Standard Chartered Bank seems to indicate that Madam Leong's correspondence address was c/o Dr. Alan Yap, Glendene Guildford Road, Cranleigh Surrey GU 6 - 8 PF, United Kingdom. It is therefore reasonable for the petitioner to believe that Madam Leong would act under the control and directions of Alan Yap, and thereby impede or prejudice the process of proper tracing the properties and administration of the estate, which, according to the petitioner, also comprise properties in foreign countries. (See *Re Newsham* (*supra*)).

The parties cited had been given notice by the petitioner to renounce their right to take out letters of administration as they have declined to do so. They have refused to renounce their right and refused to apply for LA. Consequently, adverse consequences ought rightly to flow against the right of the parties cited to a grant of letters of administration. In my view, Madam Leong should not be allowed to blow hot and cold, so to say; that is, to decline to take out letters of administration on alleged ground that the estate was only worth a paltry amount, but yet, now to insist that she be made a co-administrator of the estate. I need only quote a passage in *Probate and Administration in Singapore and Malaysia: Law and Practice* by G. Raman, at p. 84, where the author had expressed the following views:

> Where a person who has a prior right to grant of probate or administration delays or declines to take it, but will not renounce his right, he may be cited by a person having a right which is inferior to his, to accept or refuse the grant. This normally takes place where a person who is entitled to petition for letters of representation fails or neglects to do so, and as a result the administration of the estate is held up. This may cause loss to the beneficiaries of the estate, and it is to prevent waste that such citations are normally filed.

The petitioner has also undertaken to bear the whole cost and expenses to be incurred on taking out, tracing the properties and the administration of the estate, in the event that the estate is not found to be worth substantially above the alleged value.

In the event, I allowed the petitioner's application for letters of administration on the estate of the deceased, as the sole administrator, but he is to bear the costs and expenses to be incurred on taking out LA, tracing the properties and administration of the estate. It was further order that should the estate be found to be substantially above the alleged value, then the petitioner as administrator will be indemnified on such costs and expenses by the estate, as in normal practice.

Lastly, the pending appeal by the parties cited against my decision herein poses two questions (one, strange and the other interesting): if the deceased's (the late Yap Kuan Keat) estate is truly worth only RM833.79, why then this appeal; and, as this appeal appears to have been filed without leave to the Court of Appeal, would it not, if condoned, open the floodgates to similar appeals being filed on LA matters where the appellants themselves have asserted the estate to be worth not more than a paltry amount.